

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)

v.)

JAMES E. REID,
Defendant.)

Criminal No. 04-CR-10031-WGY

**GOVERNMENT'S MOTION FOR AN ORDER COMPELLING
THE PRODUCTION OF HANDWRITING EXEMPLARS**

The United States of America hereby moves this Court for an Order directing defendant James E. Reid to provide handwriting exemplars to the Government on June 14, 2004,¹ for purposes of analysis and comparison. In support of this motion the Government states as follows:

1. The subject handwriting exemplars will be used solely as a standard of comparison in order to determine whether the defendant is the author of certain handwritten documents, including fabricated signatures on Firepond sales agreements which defendant Reid presented to Firepond as completed deals and similar evidence obtained during the Grand Jury investigation of this matter.
2. The subject handwriting exemplars will be taken by providing written words for the defendant to copy in his own hand, and in no way are intended to elicit evidence of a testimonial nature.
3. Securing handwriting exemplars pursuant to a court order does not constitute a

¹ Defendant Reid is a resident of Canada whose ability to travel into the United States is restricted as a result of prior criminal convictions. Each appearance in the District of Massachusetts requires special advance clearance through the Office of Custom and Border Protection ("CPB"). Reid is scheduled to appear for arraignment before Chief Magistrate Judge Bowler on June 14, 2004.

“seizure” under the Fourth Amendment because a person’s handwriting is repeatedly shown to the public, and therefore, there is no expectation of privacy as to a person’s handwriting.

4. Handwriting exemplars are also identifying physical characteristics which are outside the protection of the Fifth Amendment. Accordingly, Mr. Reid has no constitutional basis on which to refuse to furnish the requested handwriting exemplars.
5. Further reasons supporting this motion are contained in the Government’s accompanying Memorandum of Law.

Respectfully submitted this 26th day of May, 2004

MICHAEL J. SULLIVAN
United States Attorney

By: _____
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing upon Leo Sorokin, Esq., Federal Defender’s Office, 408 Atlantic Avenue, Boston, MA 02210.

Victor A. Wild
Assistant United States Attorney

UNITED STATES DISTRICT COURT
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 JAMES E. REID,)
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Criminal No. 04-CR-10031-WGY

MEMORANDUM OF LAW IN SUPPORT OF GOVERNMENT’S MOTION
FOR AN ORDER COMPELLING THE PRODUCTION OF
HANDWRITING EXEMPLARS

The United States of America submits this memorandum in support of its motion for an Order compelling the production of handwriting exemplars from defendant James E. Reid. There is probable cause to believe that obtaining handwriting exemplars from Reid may lead to discovery of the identity of the author or authors of material handwritten evidence (*e.g.* fabricated sales agreements) relevant to the defrauding of Firepond, Reid’s former employer.

I. RELEVANT FACTS

As alleged in the February 4, 2004 Indictment, Reid is charged with presenting to his employer, Firepond, three purported sales agreements and related documentation that were fraudulent in that the subject companies had never executed any sales agreements for the purchase of goods or services from Firepond.

Based on the allegations contained in the Indictment, there is probable cause to believe that handwriting exemplars the Government seeks to obtain will likely aid federal investigators in identifying who signed the fabricated sales documents. It is necessary to obtain the handwriting exemplars in order to compare them with the handwritten evidence obtained during the criminal investigation.

II ARGUMENT

Securing handwriting exemplars pursuant to a court order does not constitute a “seizure”

under the Fourth Amendment because a person's handwriting is repeatedly shown to the public, and, therefore, there is no expectation of privacy as to a person's handwriting. United States v. Mara, 410 U.S. 19, 21-22 (1973). To require that the defendant produce handwriting exemplars violates no legitimate Fourth Amendment interest. Id. at 22.

It is equally well established that compelling a criminal defendant to produce identifying physical characteristics for examination, such as handwriting exemplars, is outside the protection of the Fifth Amendment. Gilbert v. California, 388 U.S. 263, 266-67 (1967) (taking of handwriting exemplars violates no Fifth Amendment privilege). Fifth amendment concerns arise in the case of a demand for a handwriting exemplar only when the demand is a pretext for eliciting evidence of a testimonial nature. United States v. Campbell, 732 F.2d 1017, 1021 (1st Cir. 1984) (taking of handwriting exemplar from a dictated sample violates Fifth Amendment privileges when purpose is to elicit evidence of spelling and grammatical skills of defendant). Accordingly, where the Government in this case requests handwriting exemplars of a non-testimonial nature, Reid has no constitutional basis on which to refuse to furnish the requested exemplars. See Gilbert, 388 U.S. at 266-67; Campbell, 732 F.2d at 1021.

Respectfully submitted this 26th day of May, 2004.

MICHAEL J. SULLIVAN
United States Attorney

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